

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO. 1:18-CR-00079-MOC-WCM

UNITED STATES OF AMERICA,)	
)	
)	
)	
Vs.)	<u>ROSEBORO</u> ORDER
)	
RICHARD JOSEPH CHANDLER,)	
)	
Defendant.)	

THIS MATTER is before the Court on the government's Motion to Dismiss Amended Pro Se Petition Filed by David Harlen Cole, Jr.

In accordance with Roseboro v. Garrison 582 F.2d 309 (4th Cir. 1975), the Court advises Mr. Cole, who is proceeding *pro se*, that he has the right to respond to the government's Motion. Mr. Cole is advised that he has the right to file a written Response to the government's motion to dismiss and therein explain to the Court why his Amended Petition should not be dismissed.¹

Mr. Cole is further advised that the dismissal the government seeks is based on two issues: first, the government contends that you have again failed to submit your petition under penalty of perjury; and second, that you fail to allege or explain the nature and extent of your right, title, or interest in the car.

I. Penalty of Perjury

As to the first issue, Mr. Cole is advised that he has patently failed to follow the statute or the instructions in the Court's previous Order. At this point, the Court could summarily dismiss

¹ The Fourth Circuit has repeatedly expressed a strong preference that "as a general matter defaults be avoided and that claims and defenses be disposed of on their merits." *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616 F.3d 413, 417 (4th Cir.2010).

the petition as it is apparent that petitioner does not want to file his petition under the penalty of perjury. However, this Court gives, within reason, pro se parties the benefit of the doubt. In order to now satisfy the requirement that his petition be filed under penalty of perjury, he must file affidavit that provides as follows:

Affidavit:

I swear or affirm under the penalty of perjury that the information contained in the Amended Petition (#37) is true and correct. Executed on (date).

Signature of Petitioner

Notary

Alternatively, federal law provides that if the declaration is not sworn before an official authorized to administer an oath (a Notary), it may nevertheless be admissible to support a matter if made under penalty of perjury. See 28 U.S.C. § 1746(2) (allowing for unsworn declarations to support any matter that legally permits an affidavit to support it). To file an unsworn declaration, Mr. Cole must provide a document, as follows:

Declaration

I declare (or certify, verify or state) under penalty of perjury that the the information contained in the Amended Petition (#37) is true and correct. Executed on (date).

Signature of Petitioner

Mr. Cole is advised that both an affidavit and a declaration can have the same result: criminal sanctions, including the possibility of prosecution for perjury and incarceration, if the matters contained in his Amended Petition are not in fact true and correct.

II. Nature and Extent of Interest in the Car

Second, Mr. Cole is advised that for the Petition to be considered by the Court, it is not enough to simply claim that you own the car or show that it is registered in your name. instead,

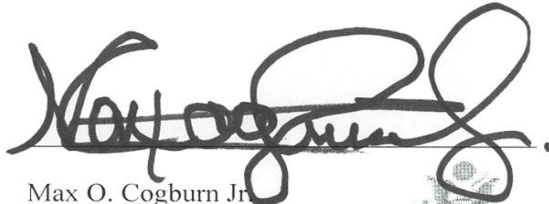
you are required to explain the nature and the extent of your right, title, or interest in the car. In addition to explaining such in detail, Mr. Cole should attach to his Response copies of any paperwork he has that supports his contention that he owns the car or that Mr. Chandler failed to pay for the car, such as a financing agreement, Bill of Sale, title, copies of checks, and receipts for payment of registration and taxes.

Finally, Mr. Cole is advised that he will be allowed **14 days** within which to file his written Response, and that failure to file a Response could result in a summary dismissal of his claim.

ORDER

IT IS, THEREFORE, ORDERED that Mr. Cole file his Response to the government's Motion to Dismiss Amended Pro Se Petition Filed by David Harlen Cole, Jr. (#39) within 14 days.

Signed: February 26, 2019



Max O. Cogburn Jr.
United States District Judge